

1 HB270  
2 173476-2  
3 By Representatives Faulkner, Davis, Hill (M), McCutcheon, Hill  
4 (J), Daniels, Williams (JD) and Johnson (K)  
5 RFD: Insurance  
6 First Read: 18-FEB-16

1  
2 ENROLLED, An Act,

3           Relating to captive insurance companies; to amend  
4 Sections 27-31B-2, 27-31B-3, 27-31B-6, 27-31B-8, 27-31B-9,  
5 27-31B-12, 27-31B-16, 27-31B-19, 27-31B-20, 27-31B-22, and  
6 27-31B-24; to add Section 27-31B-25 to, and to repeal Section  
7 27-31B-23 of the Code of Alabama 1975; to revise the licensure  
8 requirements of captive insurance companies; to allow risk  
9 retention groups to operate as captive insurance companies; to  
10 allow captive insurance companies to be formed as a series  
11 limited liability corporation; to allow for a 60-day  
12 provisional license of a captive insurance company in certain  
13 circumstances; to alter the initial capital requirements  
14 needed to form a captive insurance company; to cap the premium  
15 tax of captive insurance companies and no longer require a  
16 premium tax until a captive insurance company is licensed for  
17 12 months; and to provide for the governance and taxation of  
18 protected cell captive insurance companies.

19 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

20           Section 1. Sections 27-31B-2, 27-31B-3, 27-31B-6,  
21 27-31B-8, 27-31B-9, 27-31B-12, 27-31B-16, 27-31B-19,  
22 27-31B-20, 27-31B-22, and 27-31B-24, Code of Alabama 1975, are  
23 amended to read as follows:

24           "§27-31B-2.

1           "As used in this chapter, the following terms shall  
 2 have the following meanings, unless the context clearly  
 3 indicates otherwise:

4           "(1) AFFILIATED COMPANY. Any company in the same  
 5 corporate system as a parent, an industrial insured, or a  
 6 member organization by virtue of common ownership, control,  
 7 operation, or management.

8           "(2) ALIEN CAPTIVE INSURANCE COMPANY. Any insurance  
 9 company formed to write insurance business for its parents and  
 10 affiliates and licensed pursuant to the laws of an alien  
 11 jurisdiction which imposes statutory or regulatory standards  
 12 in a form acceptable to the commissioner on companies  
 13 transacting the business of insurance in that jurisdiction.

14           "(3) ASSOCIATION. Any legal association of  
 15 individuals, corporations, limited liability companies,  
 16 partnerships, or associations, or other entities whereby that  
 17 ~~has been in continuous existence for at least one year and~~  
 18 ~~meets~~ either of the following exists:

19           "a. The member organizations of ~~which collectively,~~  
 20 ~~or which does itself,~~ which, or the association itself,  
 21 whether or not in conjunction with some or all of the member  
 22 organizations, meet either one of the following:

23           "1. Own, control, or hold with power to vote all of  
 24 the outstanding voting securities of an association captive  
 25 insurance company incorporated as a stock insurer.

1           "2. Have complete voting control over an association  
2 captive insurance company incorporated as a mutual insurer.

3           "3. Have complete voting control over an association  
4 captive insurance company formed as a limited liability  
5 company.

6           "b. The member organizations of which collectively  
7 constitute all of the subscribers of an association captive  
8 insurance company formed as a reciprocal insurer.

9           "(4) ASSOCIATION CAPTIVE INSURANCE COMPANY. Any  
10 company that insures risks of the member organizations of the  
11 association, and that also may insure the risks of affiliated  
12 companies of the member organizations and the risks of the  
13 association itself and their affiliated companies.

14           "(5) BRANCH BUSINESS. Any insurance business  
15 transacted by a branch captive insurance company in this  
16 state.

17           "(6) BRANCH CAPTIVE INSURANCE COMPANY. Any alien  
18 captive insurance company licensed by the commissioner to  
19 transact the business of insurance in this state through a  
20 business unit with a principal place of business in this  
21 state. A branch captive insurance company is a pure captive  
22 insurance company with respect to operations in this state,  
23 unless otherwise permitted by the commissioner.

24           "(7) BRANCH OPERATIONS. Any business operations of a  
25 branch captive insurance company in this state.

1           "(8) CAPTIVE INSURANCE COMPANY. Any pure captive  
2 insurance company, association captive insurance company,  
3 ~~sponsored captive insurance company~~ risk retention group,  
4 protected cell captive insurance company, incorporated cell  
5 captive insurance company, or industrial insured captive  
6 insurance company formed or licensed under this chapter. ~~For~~  
7 ~~purposes of this chapter, a branch captive insurance company~~  
8 ~~shall be a pure captive insurance company with respect to~~  
9 ~~operations in this state, unless otherwise permitted by the~~  
10 ~~commissioner.~~

11           "(9) CAPTIVE RISK RETENTION GROUP. A captive  
12 insurance company organized and licensed as a captive insurer  
13 under the laws of this state and operating pursuant to the  
14 Liability Risk Retention Act of 1986, as amended, 15 U.S.C.  
15 §3901 et seq., as a stock or mutual corporation, a reciprocal,  
16 or other limited liability entity. Risk retention groups  
17 formed under this chapter are subject to all the same  
18 provisions of this title applicable to a casualty insurer  
19 organized and licensed under the laws of this state.

20           "~~(9)~~ (10) COMMISSIONER. The Alabama Commissioner of  
21 Insurance or the commissioner's designee.

22           "~~(10)~~ (11) CONTROLLED UNAFFILIATED BUSINESS. Any  
23 company that meets all of the following criteria:

24           "a. Is not in the corporate system of a parent and  
25 affiliated companies in the case of a pure captive insurance

1 company, or is not in the corporate system of an industrial  
2 insured and its affiliated companies in the case of an  
3 industrial insured captive insurance company.

4 "b. Has an existing contractual relationship with a  
5 parent or one of its affiliated companies in the case of a  
6 pure captive insurance company or with an industrial insured  
7 or one of its affiliated companies in the case of an  
8 industrial insured captive insurance company.

9 "c. Whose risks are managed by a ~~pure~~ captive  
10 insurance company or an industrial insured captive insurance  
11 company, as applicable, in accordance with Section 27-31B-20.

12 "~~(11)~~ (12) EXCESS WORKERS' COMPENSATION INSURANCE. In  
13 the case of an employer or group of employers that has insured  
14 or self-insured its workers' compensation risks in accordance  
15 with applicable state or federal law, insurance in excess of a  
16 specified per-incident or aggregate limit established by the  
17 commissioner.

18 "(13) GENERAL ACCOUNT. All assets and liabilities of  
19 a protected cell captive insurance company not attributable to  
20 a protected cell.

21 "(14) INCORPORATED CELL. A protected cell of an  
22 incorporated cell captive insurance company that is organized  
23 as a corporation or other legal entity separate from the  
24 incorporated cell captive insurance company.

1           "(15) INCORPORATED CELL CAPTIVE INSURANCE COMPANY. A  
2 protected cell captive insurance company that is established  
3 as a corporation or other legal entity separate from its  
4 incorporated cells that are also organized as separate legal  
5 entities.

6           "~~(12)~~(16) INDUSTRIAL INSURED. As defined in  
7 subdivision (2) of Section 27-10-20.

8           "~~(13)~~(17) INDUSTRIAL INSURED CAPTIVE INSURANCE  
9 COMPANY. Any company that insures risks of the industrial  
10 insureds that comprise the industrial insured group, and ~~their~~  
11 that may insure the risks of the affiliated companies of the  
12 industrial insureds and the risks of the controlled  
13 unaffiliated business of an industrial insured or its  
14 affiliated companies.

15           "~~(14)~~(18) INDUSTRIAL INSURED GROUP. Any group that  
16 meets either of the following criteria:

17           "a. Any group of industrial insureds that  
18 collectively meet any of the following criteria:

19           "1. Own, control, or hold with power to vote all of  
20 the outstanding voting securities of an industrial insured  
21 captive insurance company incorporated as a stock insurer.

22           "2. Have complete voting control over an industrial  
23 insured captive insurance company incorporated as a mutual  
24 insurer.

1           "3. Constitute all of the subscribers of an  
2 industrial insured captive insurance company formed as a  
3 reciprocal insurer.

4           "4. Have complete voting control over an industrial  
5 insured captive insurance company formed as a limited  
6 liability company.

7           "b. Any group which is created under the Product  
8 Liability Risk Retention Act of 1981, 15 U.S. Code § 3901 et  
9 seq., as amended, as a corporation or other limited liability  
10 association taxable as a stock insurance company or a mutual  
11 insurer under the law of the State of Alabama.

12           "~~(15)~~ (19) MEMBER ORGANIZATION. Any individual,  
13 corporation, limited liability company, partnership, ~~or~~  
14 association, or other entity that belongs to an association.

15           "(20) MUNICIPAL CORPORATION. A corporation or other  
16 legal entity organized without stockholders. The term includes  
17 a nonprofit corporation with members.

18           "(21) MUTUAL INSURER. An incorporated captive  
19 insurer without capital stock and the governing body of which  
20 is elected from policyholders at the mutual members' annual  
21 meeting.

22           "(22) ORGANIZATIONAL DOCUMENTS. The documents that  
23 must be submitted pursuant to state law in order to legally  
24 form a business in this state, or to obtain a certificate of  
25 authority to transact business in the state.

1           "~~(16)~~(23) PARENT. ~~A~~ An individual, corporation,  
2 limited liability company, partnership, or individual  
3 association, or other entity that directly or indirectly owns,  
4 controls, or holds with power to vote more than 50 percent of  
5 the outstanding ~~voting securities of a pure captive insurance~~  
6 ~~company~~ of any of the following:

7           "(1) Voting securities of a pure captive insurance  
8 company organized as a stock corporation.

9           "(2) Membership interests of a pure captive  
10 insurance company organized as a nonprofit corporation.

11           "(3) Membership interests of a pure captive  
12 insurance company organized as a limited liability company.

13           "~~(17)~~(24) PARTICIPANT. An entity as defined in  
14 Section 27-31B-24, and any affiliates thereof, that are  
15 insured by a ~~sponsored~~ protected cell captive insurance  
16 company, where the losses of the participant are limited  
17 through a ~~participant contract to the participant's pro rata~~  
18 ~~share of the assets of one or more protected cells identified~~  
19 ~~in the~~ participant contract.

20           "~~(18)~~(25) PARTICIPANT CONTRACT. A contract by which  
21 a ~~sponsored~~ protected cell captive insurance company insures  
22 the risks of a participant and limits the losses of each  
23 participant to its pro rata share of the assets of one or more  
24 protected cells identified in the participant contract.

1           "~~(19)~~ (26) PROTECTED CELL. A separate account  
2 established by a ~~sponsored~~ protected cell captive insurance  
3 company formed or licensed under this chapter, in which ~~assets~~  
4 ~~are maintained for one or more participants~~ an identified pool  
5 of assets and liabilities is segregated and insulated by means  
6 of this chapter from the remainder of the protected cell  
7 captive insurance company's assets and liabilities in  
8 accordance with the terms of one or more participant contracts  
9 to fund the liability of the ~~sponsored~~ protected cell captive  
10 insurance company, with respect to the participants as set  
11 forth in the participant contracts.

12           "(27) PROTECTED CELL ASSETS. All assets, contract  
13 rights, and general intangibles identified with and  
14 attributable to a specific protected cell of a protected cell  
15 captive insurance company.

16           "(28) PROTECTED CELL CAPTIVE INSURANCE COMPANY. Any  
17 captive insurance company meeting all of the following:

18           "a. The minimum capital and surplus required by this  
19 chapter are provided by one or more sponsors.

20           "b. The company is formed and licensed under this  
21 chapter.

22           "c. The company insures the risks of separate  
23 participants through participant contracts.

24           "d. The company funds its liability to each  
25 participant through one or more protected cells and segregates

1 the assets of each protected cell from the assets of other  
 2 protected cells and from the assets of the protected cell  
 3 captive insurance company's general account.

4 "(29) PROTECTED CELL LIABILITIES. All liabilities  
 5 and other obligations identified with and attributed to a  
 6 specific protected cell of a protected cell captive insurance  
 7 company.

8 ~~"(20)~~ (30) PURE CAPTIVE INSURANCE COMPANY. Any  
 9 company that insures risks of its parent and affiliated  
 10 companies or controlled unaffiliated business or businesses.

11 ~~"(21)~~ (31) SPONSOR. Any person or entity that ~~meets~~  
 12 ~~the requirements of Section 27-31B-23 and is approved by the~~  
 13 ~~commissioner to provide all or part of the capital and surplus~~  
 14 ~~required by applicable law and to organize and operate a~~  
 15 ~~sponsored~~ protected cell captive insurance company.

16 ~~"(22) SPONSORED CAPTIVE INSURANCE COMPANY. Any~~  
 17 ~~captive insurance company meeting all of the following~~  
 18 ~~criteria:~~

19 ~~"a. The minimum capital and surplus required by~~  
 20 ~~applicable law is provided by one or more sponsors.~~

21 ~~"b. Is formed or licensed under this chapter.~~

22 ~~"c. Insures the risks of separate participants~~  
 23 ~~through participant contracts.~~

24 ~~"d. Funds its liability to each participant through~~  
 25 ~~one or more protected cells and segregates the assets of each~~

1 ~~protected cell from the assets of other protected cells and~~  
2 ~~from the assets of the sponsored captive insurance company's~~  
3 ~~general account.~~

4 "(32) SURPLUS NOTE. An unsecured subordinated debt  
5 obligation deemed to be a surplus certificate under terms  
6 acceptable to the commissioner.

7 "§27-31B-3.

8 "(a) Any captive insurance company, when permitted  
9 by its articles of association, charter, or other  
10 organizational document, may apply to the commissioner for a  
11 license to do any and all insurance defined in Sections  
12 27-5-2, 27-5-4, and 27-5-5, in subdivisions (1), (2), (4),  
13 (5), (6), (7), (8), (9), (10), (11), (12), (13), and (14) of  
14 subsection (a) of Section 27-5-6, in Sections 27-5-7, 27-5-8,  
15 27-5-9, and 27-5-10, and to grant annuity contracts as defined  
16 in Section 27-5-3, subject, however, to all of the following:

17 "(1) No pure captive insurance company may insure  
18 any risks other than those of its parent and affiliated  
19 companies or controlled unaffiliated business.

20 "(2) No association captive insurance company may  
21 insure any risks other than those of the member organizations  
22 of its association, and their affiliated companies.

23 "(3) No industrial insured captive insurance company  
24 may insure any risks other than those of the industrial

1 insureds that comprise the industrial insured group, and their  
2 affiliated companies.

3 "(4) No risk retention group may insure any risks  
4 other than those of its members and owners.

5 "(5) No captive insurance company may provide  
6 personal motor vehicle coverage or any component thereof.  
7 Homeowner's insurance coverage may be written by an Alabama  
8 Coastal Captive Insurance Company as defined in Chapter 31C,  
9 but only in the gulf front, beach, and seacoast areas as  
10 designated by the Insurance Services Office, Inc.

11 "~~(5)~~(6) No captive insurance company may accept or  
12 cede reinsurance except as provided in Section 27-31B-13.

13 "~~(6)~~(7) Any captive insurance company may provide  
14 excess workers' compensation insurance to its parent and  
15 affiliated companies, and member organizations unless  
16 prohibited by the laws of the state having jurisdiction over  
17 the transaction. Any captive insurance company may reinsure  
18 workers' compensation of a qualified self-insured plan of its  
19 parent and affiliated companies.

20 "~~(7)~~(8) Any captive insurance company which insures  
21 risks described in Sections 27-5-2 and 27-5-4 shall comply  
22 with all applicable state and federal laws.

23 "~~(8)~~(9) No branch captive insurance company may  
24 write any business in this state except insurance or  
25 reinsurance of the employee benefit business of its parent and

1 affiliated companies which is subject to the Employee  
2 Retirement Income Security Act of 1974, as amended.

3 "~~(9) No sponsored~~ (10) No protected cell captive  
4 insurance company may insure any risks other than those of its  
5 participants.

6 "(b) To conduct insurance business in this state, a  
7 captive insurance company shall comply with all of the  
8 following:

9 "(1) It must obtain from the commissioner a license  
10 authorizing it to do insurance business in this state.

11 "(2) Its board of directors or managers, or in the  
12 case of a reciprocal insurer, its subscribers' advisory  
13 committee, must hold at least one meeting each year in this  
14 state.

15 "(3) It must maintain its principal place of  
16 business in this state, or in the case of a branch captive  
17 insurance company, maintain the principal place of business  
18 for its branch operations in this state.

19 "(4) It must appoint a registered agent to accept  
20 service of process and to otherwise act on its behalf in this  
21 state; subject further to the following:

22 "a. If formed as a corporation or other legal  
23 entity, whenever the registered agent cannot with reasonable  
24 diligence be found at the registered office of the captive  
25 insurance company, the Secretary of State shall be an agent of

1 the captive insurance company upon whom any process, notice,  
 2 or demand may be served.

3 "b. If formed as a reciprocal insurer, whenever the  
 4 registered agent cannot with reasonable diligence be found at  
 5 the registered office of the captive insurance company, the  
 6 commissioner shall be an agent of the captive insurance  
 7 company upon whom any process, notice, or demand may be  
 8 served.

9 "(c) (1) Before receiving a license, a captive  
 10 insurance company shall comply with one of the following:

11 "a. If formed as a corporation or other legal  
 12 entity, it shall file with the commissioner a certified copy  
 13 of its ~~charter~~ organizational documents and bylaws, a  
 14 statement under oath of its president and secretary or other  
 15 authorized official showing its financial condition, and any  
 16 other statements or documents required by the commissioner.

17 "b. If formed as a reciprocal insurer, it shall  
 18 comply with both of the following:

19 "1. File with the commissioner a certified copy of  
 20 the power of attorney of its attorney-in-fact, a certified  
 21 copy of its subscribers' agreement, a statement under oath of  
 22 its attorney-in-fact showing its financial condition, and any  
 23 other statements or documents required by the commissioner.

24 "2. Submit to the commissioner for approval a  
 25 description of the coverages, deductibles, coverage limits,

1 and rates, together with any additional information as the  
2 commissioner may reasonably require. In the event of any  
3 subsequent material change in any item in the description, the  
4 reciprocal captive insurance company shall submit to the  
5 commissioner for approval an appropriate revision and shall  
6 not offer any additional kinds of insurance until a revision  
7 of the description is approved by the commissioner. The  
8 reciprocal captive insurance company shall inform the  
9 commissioner of any material change in rates within 30 days of  
10 the adoption of the change.

11 "(2) In addition to the information required by  
12 subdivision (1), each applicant captive insurance company  
13 shall file with the commissioner evidence of all of the  
14 following:

15 "a. The amount and liquidity of its assets relative  
16 to the risks to be assumed.

17 "b. The adequacy of the expertise, experience, and  
18 character of the person or persons who will manage it.

19 "c. The overall soundness of its plan of operation.

20 "d. The adequacy of the loss prevention programs of  
21 its parent, member organizations, ~~or~~ industrial insureds, or  
22 other insureds as applicable.

23 "e. Any other factors deemed relevant by the  
24 commissioner in ascertaining whether the proposed captive  
25 insurance company will be able to meet its policy obligations.

1           "(3) In addition to the information required by  
2 subdivisions (1) and (2), each applicant ~~sponsored~~ protected  
3 cell captive insurance company shall file with the  
4 commissioner all of the following:

5           "a. A business plan demonstrating how the applicant  
6 will account for the loss and expense experience of each  
7 protected cell at a level of detail found to be sufficient by  
8 the commissioner and how it will report the experience to the  
9 commissioner.

10           "b. A statement acknowledging that all financial  
11 records of the ~~sponsored~~ protected cell captive insurance  
12 company, including records pertaining to any protected cells,  
13 shall be made available for inspection or examination by the  
14 commissioner or the commissioner's designated agent.

15           "c. All contracts or sample contracts between the  
16 ~~sponsored~~ protected cell captive insurance company and any  
17 participants.

18           "d. Evidence that expenses shall be allocated to  
19 each protected cell in a fair and equitable manner.

20           "(4) Information submitted pursuant to this  
21 subsection shall be and remain confidential, and may not be  
22 made public by the commissioner or by an employee or agent of  
23 the commissioner without the written consent of the company,  
24 except as provided in the following:

1            "a. The information may be discoverable by a party  
2 in a civil action or contested case to which the captive  
3 insurance company that submitted the information is a party,  
4 upon a showing by the party seeking to discover the  
5 information that (i) the information sought is relevant to and  
6 necessary for the furtherance of the action or case, (ii) the  
7 information sought is unavailable from other nonconfidential  
8 sources, and (iii) a subpoena issued by a judicial or  
9 administrative officer of competent jurisdiction has been  
10 submitted to the commissioner. Notwithstanding the foregoing,  
11 this subdivision shall not apply to any industrial insured  
12 captive insurance company insuring the risks of an industrial  
13 insured group as defined in paragraph b. of subdivision ~~(14)~~  
14 (18) of Section 27-31B-2 or to a captive risk retention group.

15            "b. The commissioner may disclose the information to  
16 a public officer having jurisdiction over the regulation of  
17 insurance in another state, provided that (i) the public  
18 official shall agree in writing to maintain the  
19 confidentiality of the information, and (ii) the laws of the  
20 state in which the public official serves require the  
21 information to be and to remain confidential.

22            "(d) Each captive insurance company shall pay to the  
23 commissioner a nonrefundable fee as set forth in Section  
24 27-31B-4 for examining, investigating, and processing its  
25 application for license, and the commissioner is authorized to

1 retain legal, financial, and examination services from outside  
2 the department, the reasonable cost of which may be charged  
3 against the applicant in accordance with Section 27-2-25. In  
4 addition, each captive insurance company shall pay a license  
5 fee for the year of registration and a renewal fee for each  
6 year thereafter as set forth in Section 27-31B-4.

7 "(e) If the commissioner is satisfied that the  
8 documents and statements filed by a captive insurance company  
9 comply with this chapter, the commissioner may grant a license  
10 authorizing the company to do insurance business in this state  
11 until April 1 thereafter, which license may be renewed.

12 "(f) (1) Notwithstanding any other provision of this  
13 chapter, the commissioner may issue a provisional license to  
14 any applicant captive insurance company for a period not to  
15 exceed 60 days if the commissioner deems that the public  
16 interest will be served by the issuance of the provisional  
17 license.

18 "(2) As a condition precedent to the issuance of a  
19 provisional license under this subsection, the applicant shall  
20 have filed a complete application containing all information  
21 required by this section, paid all fees required for  
22 licensure, and the commissioner shall have made a preliminary  
23 finding that the expertise, experience, and character of the  
24 person or persons who will control and manage the captive  
25 insurer are acceptable.

1           "(3) The commissioner, by order, may limit the  
2 authority of any provisional licensee in any way deemed  
3 necessary to protect insureds and the public. The  
4 commissioner, by order, may revoke a provisional license if  
5 the interests of insureds or the public are endangered. If the  
6 applicant fails to complete the regular licensure application  
7 process within the 60-day provisional period, the provisional  
8 license shall terminate automatically at the end of the 60-day  
9 period, and any policy issued during the provisional period  
10 shall be cancelled as of the termination date and any premium  
11 unearned shall be refunded to the policyholder within 10 days.

12           "§27-31B-6.

13           "(a) No ~~pure captive insurance company, association~~  
14 ~~captive insurance company, sponsored captive insurance~~  
15 ~~company, or industrial insured captive insurance company~~ shall  
16 be issued a license unless it shall possess and thereafter  
17 maintain unimpaired paid-in capital and surplus as follows:

18           "(1) In the case of a pure captive insurance  
19 company, not less than two hundred fifty thousand dollars  
20 (\$250,000) or such other amount determined by the commissioner  
21 and actuarially supported by a feasibility study.

22           "(2) In the case of an association captive insurance  
23 company or risk retention group, not less than ~~seven hundred~~  
24 ~~fifty thousand dollars (\$750,000)~~ five hundred thousand

1 dollars (\$500,000) or such other amount determined by the  
2 commissioner and actuarially supported by a feasibility study.

3 "(3) In the case of an industrial insured captive  
4 insurance company, not less than five hundred thousand dollars  
5 (\$500,000).

6 "(4) In the case of a ~~sponsored~~ protected cell  
7 captive insurance company, not less than ~~one million dollars~~  
8 ~~(\$1,000,000)~~ two hundred fifty thousand dollars (\$250,000) or  
9 such other amount determined by the commissioner and  
10 actuarially supported by a feasibility study.

11 "(b) Notwithstanding the requirements of subsection  
12 (a), no captive insurance company organized as a reciprocal  
13 insurer under this chapter shall be issued a license unless it  
14 has and thereafter maintains free surplus of one million  
15 dollars (\$1,000,000).

16 "(c) The commissioner may prescribe additional  
17 capital and surplus based upon the type, volume, and nature of  
18 insurance business transacted.

19 "(d) Capital and surplus may be in the form of cash,  
20 cash equivalents, securities meeting the eligibility  
21 requirements of Section 27-6-3, or, if approved by the  
22 commissioner, a clean, irrevocable, and unconditional letter  
23 of credit issued by a bank chartered by the State of Alabama  
24 or a member bank of the Federal Reserve System and approved by

1 the commissioner. No assets of the captive insurer shall be  
2 pledged or encumbered for the payment of the letter of credit.

3 "(e) In the case of a branch captive insurance  
4 company, as security for the payment of liabilities  
5 attributable to the branch operations, the commissioner shall  
6 require that a trust fund, funded by an irrevocable letter of  
7 credit or other acceptable asset, be established and  
8 maintained in the United States for the benefit of United  
9 States policyholders and United States ceding insurers under  
10 insurance policies issued or reinsurance contracts issued or  
11 assumed, by the branch captive insurance company through its  
12 branch operations. The amount of the security may be no less  
13 than the capital and surplus required hereunder and the  
14 reserves on these insurance policies or reinsurance contracts,  
15 including reserves for losses, allocated loss adjustment  
16 expenses, incurred but not reported losses, and unearned  
17 premiums with regard to business written through the branch  
18 operations. Notwithstanding the foregoing, the commissioner  
19 may permit a branch captive insurance company that is required  
20 to post security for loss reserves on branch business by its  
21 reinsurer to reduce the funds in the trust account required by  
22 this section by the same amount so long as the security  
23 remains posted with the reinsurer. If the form of security  
24 selected is a letter of credit, the letter of credit must be

1 established by, or issued or confirmed by, a bank chartered in  
 2 this state or a member bank of the Federal Reserve System.

3 "§27-31B-8.

4 "(a) A pure captive insurance company or a ~~sponsored~~  
 5 protected cell captive insurance company shall be ~~incorporated~~  
 6 formed as a stock or mutual insurer, or as a nonprofit or  
 7 limited liability company with its capital divided into ~~shares~~  
 8 units and held by the stockholders, members, or other  
 9 equivalent as allowed by law.

10 "(b) An association captive insurance company, ~~or an~~  
 11 industrial insured captive insurance company, or a risk  
 12 retention group may be formed in any of the following ways:

13 "(1) ~~Incorporated~~ Organized as a stock insurer with  
 14 its capital divided into ~~shares~~ share units and held by the  
 15 stockholders, members, or other equivalent as allowed by law.

16 "(2) ~~Incorporated~~ Organized as a mutual insurer  
 17 without capital stock, the governing body of which is elected  
 18 by the member organizations of its association.

19 "(3) Organized as a reciprocal insurer in accordance  
 20 with Chapter 31 of this title.

21 "(4) Organized as a manager-managed limited  
 22 liability company.

23 "(c) A captive insurance company incorporated or  
 24 organized in this state shall have ~~not less than three~~  
 25 ~~incorporators or two organizers of whom not less than two~~ one

1 or more incorporators or one or more organizers, at least one  
2 of which shall be a resident of this state.

3 "(d) (1) In the case of a captive insurance company  
4 formed as a corporation, before the articles of incorporation  
5 are transmitted to the Secretary of State, the incorporators  
6 shall petition the commissioner to issue a certificate setting  
7 forth the commissioner's finding that the establishment and  
8 maintenance of the proposed corporation will promote the  
9 general good of the state. In arriving at this finding the  
10 commissioner shall consider all of the following:

11 "a. The character, reputation, financial standing,  
12 and purposes of the incorporators.

13 "b. The character, reputation, financial  
14 responsibility, insurance experience, and business  
15 qualifications of the officers and directors.

16 "c. Any other aspects as the commissioner shall deem  
17 advisable.

18 "(2) The articles of incorporation, the certificate,  
19 and the organization fee shall be transmitted to the Secretary  
20 of State, who shall thereupon record both the articles of  
21 incorporation and the certificate.

22 "(e) In the case of a captive insurance company  
23 formed as a reciprocal insurer, the organizers shall petition  
24 the commissioner to issue a certificate setting forth the  
25 commissioner's finding that the establishment and maintenance

1 of the proposed association will promote the general good of  
2 the state. In arriving at this finding the commissioner shall  
3 consider all of the following:

4 "(1) The character, reputation, financial standing,  
5 and purposes of the organizers.

6 "(2) The character, reputation, financial  
7 responsibility, insurance experience, and business  
8 qualifications of the attorney-in-fact.

9 "(3) Any other aspects as the commissioner shall  
10 deem advisable.

11 "(f) In the case of a captive insurance company  
12 licensed as a branch captive insurance company, the alien  
13 captive insurance company shall petition the commissioner to  
14 issue a certificate setting forth the commissioner's finding  
15 that, after considering the character, reputation, financial  
16 responsibility, insurance experience, and business  
17 qualifications of the officers and directors of the alien  
18 captive insurance company, the licensing and maintenance of  
19 the branch operations will promote the general good of the  
20 state. The alien captive insurance company may register to do  
21 business in this state after the commissioner's certificate is  
22 issued.

23 "(g) The capital stock of a captive insurance  
24 company incorporated as a stock insurer may be authorized with  
25 no par value.

1           "(h) In the case of a captive insurance company  
2 ~~formed as a corporation,~~ at least one of the members of the  
3 board of directors, managing members, or equivalents as  
4 allowed by law, shall be a resident of this state.

5           "(i) In the case of a captive insurance company  
6 formed as a reciprocal insurer, at least one of the members of  
7 the subscribers' advisory committee shall be a resident of  
8 this state.

9           "(j) Captive insurance companies formed as  
10 corporations under this chapter shall have the privileges and  
11 be subject to the general corporation law as well as the  
12 applicable provisions of this chapter. In the event of  
13 conflict between the general corporation law and this chapter,  
14 the latter shall control. The provisions of this title  
15 pertaining to mergers, consolidations, conversions,  
16 mutualizations, and redomestications shall apply in  
17 determining the procedures to be followed by captive insurance  
18 companies in carrying out any of the transactions described  
19 therein, except that the commissioner may waive or modify the  
20 requirements for public notice and hearing in accordance with  
21 rules which the commissioner may adopt addressing categories  
22 of transactions. If a notice of public hearing is required,  
23 but no one requests a hearing, then the commissioner may  
24 cancel the hearing.

1           "(k) (1) Captive insurance companies formed as  
2 reciprocal insurers under this chapter shall have the  
3 privileges and be subject to Chapter 31 in addition to the  
4 applicable provisions of this chapter. In the event of a  
5 conflict between Chapter 31 and this chapter, the latter shall  
6 control. To the extent a reciprocal insurer is made subject to  
7 other provisions of this title pursuant to Chapter 31, the  
8 provisions shall not be applicable to a reciprocal insurer  
9 formed under this chapter unless the provisions are expressly  
10 made applicable to captive insurance companies under this  
11 chapter.

12           "(2) In addition to subdivision (1), captive  
13 insurance companies organized as reciprocal insurers that are  
14 industrial insured groups as defined in paragraph b. of  
15 subdivision ~~(14)~~ (18) of Section 27-31B-2 shall have the  
16 privileges and be subject to the provisions of Chapter 31A in  
17 addition to the applicable provisions of this chapter.

18           "(l) The articles of incorporation, organization, or  
19 equivalent allowed by law, or bylaws of a captive insurance  
20 company ~~formed as a corporation~~ may authorize a quorum of a  
21 board of directors to consist of no fewer than one-third of  
22 the fixed or prescribed number of directors determined under  
23 Title 10.

24           "(m) The subscribers' agreement or other organizing  
25 document of a captive insurance company formed as a reciprocal

1 insurer may authorize a quorum of a subscribers' advisory  
2 committee to consist of no fewer than one-third of its  
3 members.

4 "§27-31B-9.

5 "(a) Captive insurance companies shall not be  
6 required to make any annual report except as provided in this  
7 chapter.

8 "(b) Prior to March 1 of each year, each captive  
9 insurance company shall submit to the commissioner a report of  
10 its financial condition, verified by oath of two of its  
11 executive officers. Except as provided in Section 27-31B-6,  
12 each captive insurance company shall report using statutory  
13 accounting principles, unless the commissioner approves the  
14 use of generally accepted accounting principles, with any  
15 useful or necessary modifications or adaptations thereof  
16 required or approved or accepted by the commissioner for the  
17 type of insurance and kinds of insurers to be reported upon,  
18 and as supplemented by additional information required by the  
19 commissioner. Except as otherwise provided, each association  
20 captive insurance company and each industrial insured captive  
21 insurance company insuring the risks of an industrial insured  
22 group defined in paragraph b. of subdivision ~~(14)~~ (18) of  
23 Section 27-31B-2 shall file its report in the form required by  
24 Section 27-3-26. Each risk retention group shall file its  
25 report in the form required by Section 27-3-26 and shall

1 comply with all filing requirements set forth in this title as  
2 well as rules and bulletins of the Alabama Department of  
3 Insurance applicable to casualty insurers domiciled in the  
4 state. The commissioner shall by rule propose the forms in  
5 which pure captive insurance companies and industrial insured  
6 captive insurance companies insuring the risks of an  
7 industrial insured group defined in paragraph a. of  
8 subdivision ~~(14)~~ (18) of Section 27-31B-2 shall report.  
9 Subdivision (4) of subsection (c) of Section 27-31B-3 shall  
10 apply to each report filed pursuant to this section, except  
11 the subdivision shall not apply to reports filed by industrial  
12 insured captive insurance companies insuring the risks of  
13 industrial insured groups as defined in paragraph b. of  
14 subdivision ~~(14)~~ (18) of Section 27-31B-2.

15 "(c) Any pure captive insurance company or an  
16 industrial insured captive insurance company insuring the  
17 risks of industrial insured groups as defined in paragraph a.  
18 of subdivision ~~(14)~~ (18) of Section 27-31B-2 may make written  
19 application for filing the required report on a fiscal  
20 year-end. If an alternative reporting date is granted, the  
21 annual report shall be due 60 days after the end of the fiscal  
22 year and, in order to provide sufficient detail to support the  
23 premium tax return, the pure captive insurance company or  
24 industrial insured captive insurance company insuring the  
25 risks of industrial insureds as defined in paragraph b. of

1 subdivision ~~(14)~~ (18) of Section 27-31B-2 shall file prior to  
2 March 1 of each year for each calendar year-end, pages 1, 2,  
3 3, and 5 of the "Captive Annual Statement; Pure or Industrial  
4 Insured," verified by oath of two of its executive officers.

5 "(d) Sixty days after the fiscal year-end, a branch  
6 captive insurance company shall file with the commissioner a  
7 copy of all reports and statements required to be filed under  
8 the laws of the jurisdiction in which the alien captive  
9 insurance company is formed, verified by oath of two of its  
10 executive officers. If the commissioner is satisfied that the  
11 annual report filed by the alien captive insurance company in  
12 its domiciliary jurisdiction provides adequate information  
13 concerning the financial condition of the alien captive  
14 insurance company, the commissioner may waive the requirement  
15 for completion of the captive annual statement for business  
16 written in the alien jurisdiction.

17 "§27-31B-12.

18 "(a) An association captive insurance  
19 company, ~~sponsored captive insurance company~~ risk retention  
20 group, and an industrial insured captive insurance company  
21 insuring the risks of an industrial insured group defined in  
22 paragraph b. of subdivision ~~(14)~~ (18) of Section 27-31B-2  
23 shall comply with the investment requirements contained in  
24 this title, as applicable; provided, however, that compliance  
25 with these investment requirements shall be waived for

1 ~~sponsored captive insurance companies~~ risk retention groups to  
2 the extent that credit for risks ceded to reinsurers is  
3 allowed pursuant to Section 27-31B-13 or to the extent  
4 otherwise deemed reasonable and appropriate by the  
5 commissioner. Chapter 37 of this title shall apply to  
6 association captives, ~~sponsored captive insurance companies~~  
7 risk retention groups, and industrial insured captive  
8 insurance companies insuring the risks of industrial insured  
9 groups defined in paragraph b. of subdivision ~~(14)~~ (18) of  
10 Section 27-31B-2 except to the extent it is inconsistent with  
11 approved accounting standards in use by the association  
12 captive insurance company, ~~sponsored captive insurance company~~  
13 risk retention group, or industrial insured captive insurance  
14 company insuring the risks of an industrial insured group as  
15 defined in paragraph b. of subdivision ~~(14)~~ (18) of Section  
16 27-31B-2. Notwithstanding any other provision of this title,  
17 the commissioner may approve the use of alternative reliable  
18 methods of valuation and rating.

19 " (b) No pure captive insurance company, ~~or~~  
20 industrial insured captive insurance company insuring the  
21 risks of an industrial insured group as defined in paragraph  
22 b. of subdivision ~~(14)~~ (18) of Section 27-31B-2, or protected  
23 cell captive insurance company shall be subject to any  
24 restrictions on allowable investments whatever, including  
25 those limitations contained in Chapters 37 and 41.

1 Notwithstanding the foregoing, the commissioner may prohibit  
2 or limit any investment that threatens the solvency or  
3 liquidity of the company.

4 "(c) Only a pure captive insurance company or a  
5 protected cell captive insurance company may make loans to its  
6 parent company or affiliates. No loans to a parent company or  
7 any affiliate shall be permitted without prior written  
8 approval of the commissioner and must be evidenced by a note  
9 in a form approved by the commissioner. Loans of minimum  
10 capital and surplus funds required by Section 27-31B-6 are  
11 prohibited. Any loan made by a protected cell captive  
12 insurance company must be made from funds in the company's  
13 general account.

14 "§27-31B-16.

15 "(a) Each captive insurance company shall pay to the  
16 commissioner, by March 1 of each year, a tax at the rate of  
17 four-tenths of one percent on the first 20 million dollars,  
18 three-tenths of one percent on the next 20 million dollars,  
19 two-tenths of one percent on the next 20 million dollars,  
20 seventy-five thousandths of one percent on each dollar  
21 thereafter on the direct premiums collected or contracted for  
22 on policies or contracts of insurance written by the captive  
23 insurance company during the year ending December 31 next  
24 preceding, after deducting from the direct premiums subject to  
25 the tax the amounts paid to policyholders as return premiums

1 which shall include dividends on unabsorbed premiums or  
2 premium deposits returned or credited to policyholders.

3 Notwithstanding the foregoing, no tax shall be due or payable  
4 as to considerations received for annuity contracts.

5 "(b) Each captive insurance company shall pay to the  
6 commissioner by March 1 of each year a tax at the rate of two  
7 hundred and twenty-five thousandths of one percent on the  
8 first 20 million dollars of assumed reinsurance premium, one  
9 hundred fifty thousandths of one percent on the next 20  
10 million dollars, fifty thousandths of one percent on the next  
11 20 million dollars, twenty-five thousandths of one percent of  
12 each dollar thereafter. However, no reinsurance tax applies to  
13 premiums for risks or portions of risks which are subject to  
14 taxation on a direct basis pursuant to subsection (a). No  
15 reinsurance premium tax shall be payable in connection with  
16 the receipt of assets in exchange for the assumption of loss  
17 reserves and other liabilities of another insurer under common  
18 ownership and control if the transaction is part of a plan to  
19 discontinue the operations of the other insurer, and if the  
20 intent of the parties to the transaction is to renew or  
21 maintain business with the captive insurance company.

22 "(c) If the aggregate taxes to be paid by a captive  
23 insurance company calculated under subsections (a) and (b)  
24 amount to less than five thousand dollars (\$5,000) in any  
25 year, the captive insurance company shall pay a tax of five

1 thousand dollars (\$5,000) for that year. The aggregate taxes  
2 paid by a captive insurance company may not exceed one hundred  
3 thousand dollars (\$100,000) in any year.

4 "(d) The minimum tax for a protected cell captive  
5 insurance company may not be less than five thousand dollars  
6 (\$5,000) and shall apply to the protected cell captive  
7 insurance company as a whole and not to each protected cell.  
8 The maximum tax to be paid by a protected cell captive  
9 insurance company shall be the aggregate of the tax  
10 liabilities of each protected cell. The maximum tax liability  
11 attributed to any one protected cell captive insurance company  
12 shall be one hundred thousand dollars (\$100,000).

13 "(e) Examination expenses paid in accordance with  
14 Section 27-31B-10 and business privilege taxes paid in  
15 accordance with Section 40-14A-22 by a captive insurance  
16 company shall be allowed as credits to the tax provided for in  
17 this section for the calendar year in which they were paid. In  
18 the event application of the credit results in a negative tax  
19 due, the tax due shall be zero and any unused portion of the  
20 credit may not be carried forward for use in subsequent years.

21 "(f) A captive insurance company failing to make  
22 returns as required by Chapter 14A of Title 40 or failing to  
23 pay within the time required all taxes assessed by this  
24 section, shall be subject to Section 27-4A-4.

1           "~~(e)~~ (g) Two or more captive insurance companies  
2 under common ownership and control shall be taxed as though  
3 they were a single captive insurance company.

4           "~~(f)~~ (h) For the purposes of this section, "common  
5 ownership and control" shall have the following meaning, as  
6 applicable:

7           "(1) In the case of stock corporations, the direct  
8 or indirect ownership of 80 percent or more of the outstanding  
9 voting stock of two or more corporations by the same  
10 shareholder or shareholders.

11           "(2) In the case of mutual corporations, the direct  
12 or indirect ownership of 80 percent or more of the surplus and  
13 the voting power of two or more corporations by the same  
14 member or members.

15           "~~(g)~~ (i) In the case of a branch captive insurance  
16 company, the tax provided for in this section shall apply only  
17 to the branch business of the company.

18           "(j) If a captive insurance company has been  
19 licensed for less than a full calendar year and has written  
20 premiums the tax for which is less than the minimum set forth  
21 in this section, the tax due shall be prorated as follows:

22           "(1) If licensed on or before March 31, 100 percent.

23           "(2) If licensed April 1 to June 30, 75 percent.

24           "(3) If licensed July 1 to September 30, 50 percent.

1           "(4) If licensed October 1 to December 31, 25  
2 percent.

3           "(k) If a captive insurance company surrenders its  
4 license and the calculated tax on premiums written during the  
5 calendar year is less than the minimum set forth in this  
6 section, the tax due shall be prorated as follows:

7           "(1) If surrendered on or before March 31, 25  
8 percent.

9           "(2) If surrendered April 1 to June 30, 50 percent.

10          "(3) If surrendered July 1 to September 30, 75  
11 percent.

12          "(4) If surrendered October 1 to December 31, 100  
13 percent.

14          ~~"(h)~~ (1) The tax provided for in this section shall  
15 constitute all taxes collectible under the laws of this state  
16 from any captive insurance company, and no other occupation  
17 tax or other taxes shall be levied or collected from any  
18 captive insurance company by the state or any county, city, or  
19 municipality within this state, except business privilege  
20 taxes and ad valorem taxes on real and personal property used  
21 in the production of income.

22          "(m) The tax provided for in this section shall not  
23 be applicable if the captive insurance company writes no  
24 premiums during the calendar year.

25          "§27-31B-19.

1           "(a) Except as otherwise provided in this section,  
2 the terms and conditions set forth in Chapter 32 and Article  
3 2, commencing with Section 27-2-50, of Chapter 2, pertaining  
4 to rehabilitation, reorganization, conservation, and  
5 liquidation of insurers, shall apply in full to captive  
6 insurance companies formed or licensed under this chapter.

7           "(b) In the event of an action described in  
8 subsection (a) against a ~~sponsored~~ protected cell captive  
9 insurance company, both of the following shall apply:

10           "(1) The assets of a protected cell may not be used  
11 to pay any expenses or claims other than those attributable to  
12 the protected cell.

13           "(2) Its capital and surplus shall at all times be  
14 available to pay any expenses of or claims against the  
15 ~~sponsored~~ protected cell captive insurance company.

16           "(c) Notwithstanding the provisions of this title,  
17 in the event of an insolvency of a protected cell captive  
18 insurance company where the commissioner determines that one  
19 or more protected cells remain solvent, the commissioner may  
20 separate those cells from the protected cell captive insurance  
21 company, and may allow, on application from the sponsor, for  
22 the conversion of the protected cells into one or more new or  
23 existing captive insurance companies, pursuant to a plan of  
24 operation as the commissioner deems acceptable.

25           "§27-31B-20.

1           "The commissioner shall adopt rules establishing  
2 standards to ensure that a parent or affiliated company is  
3 able to exercise control of the risk management function of  
4 any controlled unaffiliated business to be insured by the ~~pure~~  
5 captive insurance company. Until the rules under this section  
6 are adopted, the commissioner may by temporary order grant  
7 authority to a ~~pure~~ captive insurance company to insure risks.

8           "§27-31B-22.

9           "(a) One or more sponsors may form a ~~sponsored~~  
10 protected cell captive insurance company under this chapter.

11           "(b) A ~~sponsored~~ protected cell captive insurance  
12 company formed or licensed under this chapter may establish  
13 and maintain one or more protected cells to insure risks of  
14 one or more participants, subject to all of the following  
15 conditions:

16           "~~(1) The shareholders of a sponsored captive~~  
17 ~~insurance company shall be limited to its participants and~~  
18 ~~sponsors.~~

19           "~~(2)~~ (1) Each protected cell shall be accounted for  
20 separately on the books and records of the ~~sponsored~~ protected  
21 cell captive insurance company to reflect the financial  
22 condition and results of operations of the protected cell, net  
23 income or loss, dividends or other distributions to  
24 participants, and other factors as may be provided in the  
25 participant contract or required by the commissioner.

1           "~~(3)~~(2) The assets of a protected cell shall not be  
2 chargeable with liabilities arising out of any other insurance  
3 business the ~~sponsored~~ protected cell captive insurance  
4 company may conduct.

5           "~~(4)~~(3) No sale, exchange, or other transfer of  
6 assets may be made by the ~~sponsored~~ protected cell captive  
7 insurance company between or among any of its protected cells  
8 without the consent of the protected cells.

9           "~~(5)~~(4) No sale, exchange, transfer of assets,  
10 dividend, or distribution may be made from a protected cell to  
11 a sponsor or participant without the commissioner's approval  
12 and in no event shall the approval be given if the sale,  
13 exchange, transfer, dividend, or distribution would result in  
14 insolvency or impairment with respect to a protected cell.

15           "~~(6)~~(5) Each ~~sponsored~~ protected cell captive  
16 insurance company shall annually file with the commissioner  
17 all financial reports as the commissioner shall require, which  
18 shall include, without limitation, accounting statements  
19 detailing the financial experience of each protected cell.

20           "~~(7)~~(6) Each ~~sponsored~~ protected cell captive  
21 insurance company shall notify the commissioner in writing  
22 within 10 business days of any protected cell that is  
23 insolvent or otherwise unable to meet its claim or expense  
24 obligations.

1           "~~(8)~~(7) No participant contract shall take effect  
2 without the commissioner's prior written approval, and the  
3 addition of each new protected cell and withdrawal of any  
4 participant of any existing protected cell shall constitute a  
5 change in the business plan requiring the commissioner's prior  
6 written approval.

7           "~~(9)~~(8) The commissioner, based on the type, nature,  
8 and volume of insurance business transacted, may require that  
9 the business written by a ~~sponsored~~ protected cell captive  
10 insurance company, with respect to each cell, ~~shall~~ be one of  
11 the following:

12           "a. Fronted by an insurance company licensed under  
13 the laws of any state.

14           "b. Reinsured by a reinsurer authorized or approved  
15 by the ~~State of Alabama~~ state.

16           "c. Secured by a trust fund in the United States for  
17 the benefit of policyholders and claimants funded by an  
18 irrevocable letter of credit or other asset that is acceptable  
19 to the commissioner. The amount of security provided by a  
20 trust fund shall be no less than the reserves associated with  
21 those liabilities, including reserves for losses, allocated  
22 loss adjustment expenses, incurred but not reported losses,  
23 and unearned premiums for business written through the  
24 participant's protected cell. The commissioner may require the  
25 ~~sponsored~~ protected cell captive insurance company to increase

1 the funding of any trust as established under this  
2 subdivision. If the form of security in the trust is a letter  
3 of credit, the letter of credit must be clean, irrevocable,  
4 and unconditional and must be issued or confirmed by a bank  
5 chartered in this state, a member of the federal reserve  
6 system, or a bank chartered by another state if the state  
7 chartered bank is acceptable to the commissioner. A trust and  
8 trust instrument maintained pursuant to this subdivision shall  
9 be established in a form and upon terms approved by the  
10 commissioner.

11 "§27-31B-24.

12 "(a) An association, corporation, limited liability  
13 company, partnership, trust, or other business entity may be a  
14 participant in a ~~sponsored~~ protected cell captive insurance  
15 company formed or licensed under this chapter.

16 "(b) A sponsor may be a participant in a ~~sponsored~~  
17 protected cell captive insurance company.

18 "(c) A participant need not be a shareholder of the  
19 ~~sponsored~~ protected cell captive insurance company or an  
20 affiliate of the company.

21 "(d) A participant shall insure only ~~its own~~  
22 approved risks through a ~~sponsored~~ protected cell captive  
23 insurance company."

24 Section 2. Section 27-31B-25 is added to the Code of  
25 Alabama 1975, to read as follows:

1 §27-31B-25.

2 (a) A protected cell of a protected cell captive  
3 insurance company may be formed as an incorporated protected  
4 cell.

5 (b) Subject to the prior written approval of the  
6 protected cell captive insurance company and of the  
7 commissioner, an incorporated protected cell shall be entitled  
8 to enter into contracts and undertake obligations in its own  
9 name and for its own account. In the case of a contract or  
10 obligation to which the protected cell captive insurance  
11 company is not a party, either in its own name and for its own  
12 account or on behalf of a protected cell, the counterparty to  
13 the contract or obligation shall have no right or recourse  
14 against the protected cell captive insurance company and its  
15 assets other than against assets properly attributable to the  
16 incorporated protected cell that is a party to the contract or  
17 obligation.

18 (c) The certificate of formation of an incorporated  
19 protected cell shall refer to the protected cell captive  
20 insurance company for which it is a protected cell and shall  
21 state that the protected cell is incorporated or organized for  
22 the limited purposes authorized by the protected cell captive  
23 insurance company's license. A copy of the prior written  
24 approval of the commissioner to add the incorporated protected  
25 cell, required by subdivision (7) of subsection (b) of Section

1 27-31B-22, shall be attached to and filed with the certificate  
2 of formation.

3 (d) It is the intent of the Legislature under this  
4 section to provide protected cell captive insurance companies  
5 with the option to establish one or more protected cells as a  
6 separate corporation, mutual corporation, nonprofit, limited  
7 liability company, or other entity as allowed by law. This  
8 section shall not be construed to limit any rights or  
9 protections applicable to protected cells not established as  
10 corporations, mutual corporations, nonprofit corporations,  
11 limited liability companies, or other entities as allowed by  
12 law.

13 Section 3. Section 27-31B-23, Code of Alabama 1975,  
14 relating to qualifications of sponsors of a sponsored captive  
15 insurance company, is repealed.

16 Section 4. This act shall become effective on the  
17 first day of the third month following its passage and  
18 approval by the Governor, or its otherwise becoming law.

